

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.335 of 2004

Reserved on : August 1, 2007

Date of decision : August 6, 2007

Manohar Lal	...Appellant.
Versus	
State of H.P.	...Respondent.

Coram

The Hon’ble Mr. Justice Surjit Singh, Judge.

The Hon’ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : M/s Anup Chitkara & Chaman Negi, Advocates.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

Appellant is aggrieved by the judgment of the Sessions Court whereby he has been convicted of offences punishable under Sections 302, 324 and 323 IPC and sentenced as follows:

<u>Offence-convicted of</u>	<u>Sentence Awarded</u>
302 IPC	Rigorous imprisonment for life and a fine of Rs.20,000/-, in default of payment of fine rigorous imprisonment for a further period of one year.
324 IPC	Rigorous imprisonment for three months.
323 IPC	Rigorous imprisonment for one month.

2. Appellant alongwith his mother Smt. Krodhu Devi was tried for offences punishable under Sections 302, 324 and 323 read with Section 34 IPC on the following allegations. On 19.7.2002 around

Whether reporters of the local papers may be allowed to see the judgment?

7 in the evening, appellant armed with a *Darat* and his co-accused Krodhu Devi armed with a *Danda* went to the courtyard of deceased Devku Devi, which is close to their house. Appellant dealt a number of blows of *Darat* on the face and neck of Devku Devi, as a result of which she fell on the ground and died within 15-25 minute. A daughter-in-law of the deceased, named Seema Devi (PW-2), saw the incident from the Varandah of the upper storey of the house. She raised hue and cry, on hearing which PW-1 Balak Ram, the husband of the deceased, who was sitting in the company of one Joginder, on the rooftop, reached the spot. Several other persons, including PW-3 Rajesh Sharma and PW-6 Praveen Kumar, also reached the spot. The appellant assaulted PW-1 Balak Ram also and caused some injuries to him by means of *Darat* when he tried to rescue the deceased. Rajesh (PW-3) and Praveen Kumar (PW-6) overpowered the appellant and snatched the *Darat* from him.

3. Matter was reported to the police by Balak Ram, the husband of the deceased. Inquest was conducted. Dead body was sent for postmortem examination. Following injuries were noticed by PW-9 Dr. Keshav Kaundal, who conducted the postmortem examination:

1. An incised wound on the face right side extending from lateral angle of mouth upto ear cutting through and through of mouth with clotted blood and fracture of tempromandibular joint (right) and zygoma muscles.
2. Incised wound on left cheek extending from lateral angle of mouth upto left ear with clotted blood and punctured wound of 2" X 3" behind left ear lobule.
3. Haematoma occipital region 2" X 3".

4. The doctor opined that the injuries were sufficient to cause death in the ordinary course of nature. The cause of death, as per

opinion of the doctor, was excessive haemorrhage due to face injuries in which blood percolated down to trachea and larynx and caused asphyxia or respiratory blockade and consequential death.

5. Trial Court convicted the appellant of all the three offences he was charged with and sentenced him as aforesaid. His mother and co-accused, namely Krodhu Devi, was, however, acquitted.

6. Submissions made on behalf of the appellant are twofold. First, it is submitted that the prosecution has suppressed the genesis of the occurrence which renders its version highly doubtful. Second submission is that from the facts and the circumstances of the case it is made out that the appellant did not have the requisite *mensrea* for killing the deceased and, therefore, his act is covered by Section 304 IPC.

7. Elaborating the first submission, learned counsel argued that as per testimony of PW-11 Rimpi Devi, the wife of the appellant, a quarrel had taken place between her and the appellant around 6.30 or 7 p.m. on the fateful day and in the course of that quarrel appellant hit her with some pointed object on her eyes, as a result of which she sustained bleeding injuries and after some time she heard the cries and on enquiry her mother-in-law told that same thing had happened at the house of her *Chacha* Balak Ram which happened at their house, a little earlier, and thereafter she (PW-11 Rimpi Devi), deceased Devku Devi and PW1 Balak Ram were taken together to the hospital at Sarkaghat. He argued that the aforesaid testimony of Rimpi Devi suggested that there was some co-relation between the two occurrences, the one in which PW-11 Rimpi Devi sustained the bleeding injuries and the other in which Devku Devi and PW-1 Balak Ram sustained injuries, but no evidence with respect to this co-relation has been led by the

prosecution. The argument in no way comes to the rescue of the appellant. Even if it be assumed for the sake of argument that the two occurrence are part of the same series, that would in no way dilute or render doubtful the testimony of the eye-witness, namely PW-2 Seema Devi, who claims to have witnessed the entire occurrence, which resulted in the death of Devku Devi and injuries to PW-1 Balak Ram. PW-2 Seema Devi has very categorically stated that as soon as her mother-in-law, the deceased, climbed down to the courtyard after handing over a bucket of milk to her on the first floor of the house, appellant armed with a *Darat* and his mother armed with a *Danda* came there and the appellant assaulted her mother-in-law with the *Darat* inflicting wounds on her face, neck and other parts of the body. She further stated that when she raised hue and cry, her father-in-law Balak Ram (PW-1) and several other persons, including PW-3 Rajesh Sharma and PW-6 Praveen Kumar, reached the spot and when they tried to rescue her mother-in-law the appellant hit her father-in-law PW-1 Balak Ram with *Darat* and caused some injuries, before he was overpowered by PW-3 Rajesh Sharma and PW-6 Praveen Kumar and disarmed. There does not seem to be any reason to disbelieve her testimony, which is fully corroborated by the statements of PW-1 Balak Ram, PW-3 Rajesh Sharma and PW-6 Praveen Kumar. The defence could not elicit, from PW-2 Seema Devi, indicating that she was not present on the spot or what she had stated was not true. Testimony of Seema Devi and three other witnesses, namely PW-1 Balak Ram, PW-3 Rajesh Kumar and PW-6 Praveen Kumar, is further corroborated by the testimony of PW-9 Dr. Keshav Kaundal, who noticed three injuries, as mentioned hereinabove, on the dead body of Devku Devi. The testimony of these witnesses is also corroborated by the statements of

PW-10 Dr. Ashok Chauhan, who conducted medico legal examination of PW-1 Balak Ram and noticed one incised wound 6 cm x .5 cm over his right parital region, lacerated wound about 1.5 cm skin deep over the dorsum of his left hand and a bruise about 2 cm in diameter in posterior auricular region of neck.

8. Coming to the next submission, the evidence on record shows that the appellant hit the deceased from the sharp side of *Darat* Ex. P-6 on her face with such a force that it caused an incised wound on the right side of the face extending from lateral angle of the mouth up to the ear, cutting through and through the mouth and causing fracture of tempromandibular joint. That means the blow was given with full force. Another blow, also given on the face, resulted in an incised wound on left cheek extending from lateral angle of mouth up to left ear with clotted blood and punctured wound of 2" X 3" behind the left ear lobule. Apparently, this blow was also given with considerable force. Also, there was haematoma in occipital region which indicated that a blow was given probably with the reverse of the *Darat* on the head. The injuries caused excessive haemorrhage and led to percolation of blood down the trachea and larynx, thereby causing respiratory blockade and consequential death. The appellant was still dealing blows with *Darat* to the deceased when PW-1 Balak Ram, PW-3 Rajesh Sharma, PW-6 Praveen Kumar and several other villagers reached the spot and rescued the deceased. All this shows that the appellant dealt the blows with the intention of causing death or in any case with the intention of causing such bodily injuries, as were sufficient in ordinary course of nature to cause death and, therefore, his act is covered by clause (first) of 300 IPC or in any case by clause (thirdly). Doctor's opinion is also there, per testimony of PW-9 Dr.

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Keshav Kaundal, that the injuries were sufficient in the ordinary course of nature to cause death. As a result of the above discussion, second argument raised on behalf of the appellant is also rejected.

9. As a sequel to the above discussion, appeal is dismissed.

(Surjit Singh), J

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(Surinder Singh), J